



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Wisconsin Pollutant Discharge
Elimination System Permit WI-0023931-07-0
Reissued to the City of Elroy, Juneau County,
Wisconsin

Case No. DNR-13-017

NOTICE OF PREHEARING TELEPHONE CONFERENCE

Following the public notice period, on January 30, 2013, the Department of Natural Resources (Department or DNR) sent Notice of Final Determination to Reissue a WPDES permit to the City of Elroy (Reissued Permit). The date of effectiveness for the Reissued Permit was February 1, 2013 with an expiration date of December 31, 2017.

On April 1, 2013, a verified petition for contested case hearing was submitted by the City of Elroy to the DNR pursuant to Wis. Stat. § 283.63 and Wis. Admin. Code ch. NR 203. The petition identified the following factual disputes for hearing:

1. Whether the final water quality based effluent limitations for total phosphorus are unreasonable and unnecessary.
2. Whether the compliance schedule associated with the phosphorus limitations is unreasonable.
3. Whether the six-month average associated with the phosphorous limitations is unreasonable.

On January 16, 2014 the DNR granted the City of Elroy's request for a contested case hearing with respect to the following issues:

1. Is the final phosphorus water quality based effluent limit unreasonable and unnecessary because the permittee intends to collect additional data to support a site specific criterion under § NR 102.06(7) Wis. Admin. Code?
2. Is the compliance schedule for the phosphorous water quality based effluent limitation in section 4.1 of the permit [Reissued Permit] unreasonable because it does not specifically reference the option for a site specific phosphorous criterion, and it fails to allow additional time to collect data to support a site specific criterion?
3. Was it unreasonable for the Department to express the phosphorous water quality based effluent limitation as a six-month average concentration in the permit [Reissued Permit]?

On January 17, 2017 the Division of Hearings and Appeals received a Request for Hearing from the Department of Natural Resources.

NOTICE IS HEREBY GIVEN that the State of Wisconsin Division of Hearings and Appeals (DHA) will hold an telephone prehearing conference on the above matter, pursuant to Wis. Stat. §§ 227.42 and 283.63, **at 10:00 AM on March 13, 2017**. Any person, organization or governmental unit wishing to become a party to this proceeding must contact DHA at 608-266-7709 prior to the noticed prehearing time with a name and telephone number where they can be contacted at the time of the telephone prehearing. If necessary, the purpose of the prehearing conference will be to identify interested parties to the proceeding, to clarify the issues for hearing, establish a discovery schedule and set a date for hearing. No testimony will be heard at the prehearing conference; instead, a date may be set for the hearing on the merits at the conference.

If and when the ultimate contested case hearing is held it will be a Class 1 contested case pursuant to Wis. Stat. § 227.01(3)(a) and the fair play provisions of Wis. Stat. ch. 227 will apply. The procedures relating to contested cases set forth in Wis. Admin. Code ch. NR 2 will be followed. The procedure that will be followed at the public hearing will closely resemble that normally followed at a court hearing. All parties are advised that they have the right to seek the aid and assistance of legal counsel and to be represented by legal counsel at the public hearing.

The permits, petitions and other information relating to the petitioner are on file and may be inspected and copied at the offices of the Department of Natural Resources, 101 South Webster Street, Madison, Wisconsin, between the hours of 9:00 a.m. and 3:30 p.m., Monday through Friday, holidays excepted. Copies of documents on file for the applicant may be obtained by writing to the Department of Natural Resources, WPDES Permit Section, P.O. Box 7921, Madison, Wisconsin, 53707-7921. Reasonable costs will be charged for copies of all information excluding public notices and fact sheets.

Pursuant to the Americans with Disabilities Act, reasonable accommodations will be made to any qualified individual upon request. Please call the Division of Hearings and Appeals at (608) 266-3865 with specific information on your request prior to the date of the scheduled prehearing or hearing.

Dated at Madison, Wisconsin, on January 27, 2017.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, WI 53705
Telephone: (608) 266-7709

By: 
REBECCA J. VAHLE
ADMINISTRATIVE LAW JUDGE